

240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35956-2022
Decided on : 06.10.2023

Satish Kumar

..... Petitioner

Versus

Narcotic Control Bureau, Chandigarh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Nitish K. Vasudeva, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Sr. Panel Counsel
Union of India.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the dismissal of his application under Section 311 Cr.PC vide order dated 13.05.2022 (Annexure P-4) passed by learned Special Court, Chandigarh in case NCB Crime No.34 dated 11.08.2016.

2. Learned counsel for the petitioner *inter alia* contends that an application under Section 311 Cr.PC dated 16.04.2022 (Annexure P-3), filed by the petitioner was arbitrarily and illegally dismissed vide impugned order dated 13.05.2022(Annexure P-4) by the Court below without appreciating that PW-5 Shiv Shankar was required to be recalled for his further cross-examination, and also for confronting him with some documents i.e. notice, rent deed and other material facts, in the light of the report of the handwriting expert, DW-6 Dr. Jassy Anand, which would have gone a long way in the just

adjudication of the case in hand. It has been further urged that PW-5 Shiv Shankar, during his cross-examination, had not disclosed that he had taken Hotel Dream Town, Village Kajehri, Chandigarh on rent from Jaspreet Singh vide rent deed Ex.D-1, however, when Dr. Jassy Anand, Handwriting Expert was examined by the petitioner in his defence, vide his report, gave an opinion that the signatures on notice dated 13.12.2016 (Ex.P-27) and the rent deed, which had been denied by PW-5 Shiv Shankar, were of one and the same person i.e. PW-5 Shiv Shankar. Hence, further cross-examination of PW-5 Shiv Shankar would be necessitated for the just decision of the case.

It has been further submitted that as per the case projected by the prosecution, the applicant was nabbed near Bus Stand, Sector 43, Chandigarh, however, the fact of the matter was that a false case had been planted upon him after being illegally picked up by the NCB officials from Hotel Dream Town in the morning of 10.08.2016, which fact stands captured in the CCTV footage of the hotel. It has thus, been urged that in case PW-5 Shiv Shankar is summoned for his further cross-examination, it would also surely help the Court in arriving at a just decision and would not cause any prejudice to either of the parties.

3. Per contra, learned counsel for the respondent has vehemently opposed the prayer and submissions made by the counsel opposite by urging that the impugned order did not warrant any interference as the petitioner had failed to give any cogent much less reasonable ground to recall PW-5 Shiv Shankar for his further cross-examination. Learned counsel for the State has

contended that on 03.08.2018 PW-5 Shiv Shankar was examined followed by a lengthy cross-examination by the counsel for the petitioner. On 15.09.2021, the petitioner moved an application for recalling PW-5 Shiv Shankar for his further evidence, however, the said application was rightly dismissed by the trial court vide order dated 08.11.2021. The order of dismissal dated 08.11.2021 was never challenged by the petitioner, which fact he has concealed from this Court. After the dismissal of his application on 08.11.2021, the petitioner yet again moved another application on 16.04.2022 wherein also he sought that same relief i.e. recalling of PW-5 Shiv Shankar for his further evidence. It was, thus, evident that the petitioner was indulging in dilatory tactics. Learned counsel has further submitted that even otherwise PW-5 Shiv Shankar had been subjected to a lengthy cross-examination with respect to his signatures appearing on the receipt of notice dated 09.09.2016 (Ex.D6) and furthermore, for rebutting the said contention of PW-5 Shiv Shankar, the petitioner had already examined the handwriting expert as DW-6. Hence, merely because PW-5 Shiv Shankar had denied his signatures on the document would not be a ground for recalling him for his further cross-examination. Learned counsel has also submitted that the application under Section 311 Cr.PC pursuant to which the impugned order has been passed, had been filed at a highly belated stage i.e. after 5 years from the date when the prosecution evidence had concluded i.e. on 04.09.2018, and that too at the stage of defence evidence. Learned counsel has further submitted that it is a matter of record that the petitioner had

availed more than 40 opportunities for his defence evidence, which also left no manner of doubt that the petitioner had been trying to delay the conclusion of the trial by filing frivolous applications under Section 311 Cr.PC.

4. Heard learned counsel for the parties and perused the relevant material on record.

5. This Court does not find any merit in the submissions made by learned counsel for the petitioner. It is a matter of record that PW-5 Shiv Shankar has been extensively examined with regard to all material aspects of the case including those for which he has moved an application under Section 311 Cr.PC. Needless to add, the veracity of the evidence led of both PW-5 Shiv Shankar and DW-6 Dr. Jassy Anand would be appreciated by the trial Court. Furthermore, it has also not been disputed by the learned counsel for the petitioner that for the last four years, after the conclusion of the prosecution evidence, the defence has taken as many as 40 dates for leading their evidence and is thus, it is discernible that the petitioner has been buying time. Thus, this Court has no hesitation in observing that the petitioner is indulging in dilatory tactics.

6. As a sequel to the above, the present petition being devoid of any merit stands dismissed.

06.10.2023
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No